BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Amendment of Part 90	)	
of the Commission's Rules	)	**PR Docket No. 92-210**
Governing Extended	)	
Implementation Periods	)	

To: The Commission

COMMENTS OF TEXAS UTILITIES ELECTRIC COMPANY

Texas Utilities Electric Company ("TU Electric"), by its attorneys and pursuant to Section 1.405(a) of the Commission's rules, hereby respectfully submits these Comments in response to the Notice of Proposed Rule Making ("NPRM") adopted in the above-referenced proceeding on September 9, 1992, FCC 92-429 (released October 13, 1992).

I. BACKGROUND

A. Statement of Identification

1. TU Electric is one of the largest utilities in the nation. It provides electricity across approximately

66,500 square miles -- an area about one-third the size of the State of Texas, or roughly the size of the State of Florida. The utility's overall operating territory also includes an additional 22,000 square miles through which transmission facilities and vehicle access roads run. In total, then, TU Electric's operating territory is roughly 88,500 square miles. Within its 88,500 square-mile operating territory, TU Electric serves a population of approximately 5.2 million persons, or nearly the population of the Commonwealth of Virginia.

2. For the benefit of both its customers and its employees, TU Electric must conduct its operations as safely and as efficiently as possible. Although societal order depends on the utility maintaining its facilities and recovering from calamities as quickly as possible, extreme care must be taken at every step in the process. Electric utility operations involve inherent dangers in even the best conditions. TU Electric's linemen often are working with facilities that carry hundreds of thousands of volts. TU Electric, therefore, requires absolute reliability of communications for efficient restoration of service, as well as for the safety of linemen and the public. Reliable communications links are, in essence, the direct lifeline to

the linemen and, as such, are part of the larger lifeline between the electric utility and the public.

3. To ensure realiable land mobile communications into the next century, TU Electric is now implementing a 900 MHz system to cover its entire 88,500 square-mile operating territory. Because of the system's size, TU Electric sought and acquired a waiver of the Commission's existing, so-called "slow growth" rule, giving TU Electric more than three years to implement its system. As the licensee of these significant 900 MHz facilities and the beneficiary of slow growth status, TU Electric has a strong interest in the issues raised in the NPRM.

B. Summary of the NPRM

4. In the NPRM, the Commission recognizes that modifying its rules governing extended implementation schedules would well serve the public interest. By easing the regulatory burdens on applicants who require slow growth treatment, the Commission is taking a realistic view towards construction demands and, consequently, is ultimately promoting the efficient use of spectrum by facilitating the implementation of innovative and complex land mobile radio systems.

5. The NPRM proposes several changes to the existing rules: (1) to extend the slow growth period from three to five years; (2) to require more comprehensive implementation schedules, including the identification of channels to be constructed at each station; (3) to expand the slow growth rule's applicability to Specialized Mobile Radio (SMR) Category applicants with large and complex systems; (4) to further expand the eligibility for extended implementation to include any entity that may be required by law to follow a multi-year cycle for the planning, funding, and purchasing of a proposed system; (5) and to eliminate the fleet-size requirement of eligibility for slow growth which currently precludes licensees with fewer than 200 units from the benefit of slow growth treatment.

6. Of particular interest to TU Electric, though, the Commission also proposes: (1) to clarify that Section 90.629(b) only requires slow growth licensees to load their trunked systems to 70 units per channel within the system's initial 5-year license term; and (2) to eliminate the slow growth annual reporting requirement.

II. COMMENTS

A. TU Electric Strongly Encourages the Commission to Clarify Its Loading Requirements and to Ensure that Existing Licensees Can Modify Their Slow Growth Schedules to Comport with that Clarification

7. TU Electric agrees with the proposed rule changes and supports their adoption. The plain reality is that systems as large and complex as TU Electric's require substantial time to implement. Often, it simply is impossible for a company to license its facilities, acquire and prepare sites, order equipment, install it, and complete system testing in one year or even three years.

8. TU Electric also applauds and strongly urges the Commission to follow through on its statement proposing:

> to clarify Section 90.629(b) to indicate that licensees of trunked systems authorized an extended implementation period are required to load their systems to the same level (70 mobiles per channel within 5 years of authorization) as those licensees of trunked systems not authorized an extended implementation period (see § 90.631(b)). NPRM at ¶ 5.

Currently, the loading requirements for slow growth licensees are unclear. On the one hand, Section 90.631(b) clearly states that trunked system licensees must load their systems only to 70 units per channel within five years of their initial license grants. On the other hand, certain industry participants and, indeed, Commission personnel have

indicated that slow growth licensees are required to fully load their systems by the end of the initial five-year license term. The confusion has resulted in disparate treatment for slow growth, trunked system licensees -- like TU Electric -- who have filed implementation schedules based on the belief that they had no choice but to indicate full loading within five years.

9. To completely rectify this situation, TU Electric urges the Commission to clarify that current slow growth licensees (as well as licensees of slow growth systems authorized before the rules are revised) will be allowed to modify their mobile loading schedules to comport with the clarified loading requirement. As the proposed rule is written, existing slow growth licensees arguably could still be required to follow their original loading schedules. TU Electric respectfully requests that the Commission clearly state that licensees of existing and pending slow growth systems will be allowed to benefit from the 70-unit per channel loading requirement. Such a further clarification would produce an equitable end to a Commission policy which has been applied unevenly.

B. TU Electric Encourages the Commission to Continue Its Flexible Approach in Dealing with Implementation Schedules

10. TU Electric supports the Commission's proposal to eliminate Section 90.629's annual reporting requirement. Regulations such as this are unnecessary when the Commission does not have the resources to enforce them and when less burdensome alternatives are available for addressing the same concern.

11. In eliminating the reporting requirement, TU Electric simply asks the Commission to publicly reaffirm its policy of allowing slow growth licensees to modify their implementation schedules upon submission of a proper justification. The proposed rule (properly) continues to require licensees to abide by their implementation schedules or face potential channel cancellation. However, TU Electric is concerned that, if the proposed rule is read strictly, the new regulation could prove to be extremely more burdensome than the existing rule is in practice.

12. Under the existing rule, all slow growth licensees must set forth construction and loading milestones in their implementation schedules. The individual licensee then is required to report annually on its progress under

the schedule, and if it fails to meet its schedule, it can lose channels loaded to fewer than 100 mobile units. Nonetheless, as a matter of policy, the Commission has allowed licensees to modify their implementation schedules fairly freely to account for changed circumstances.

13. This policy is the only realistic and fair approach for monitoring slow growth licensees. When an applicant submits its original implementation schedule, it makes its best estimate of the dates by which certain milestones can be met. Almost inevitably, circumstances arise during the implementation process which have a significant impact on the schedule, especially for large systems. Licensees of large systems often cannot avoid site acquisition and permitting problems, equipment delivery and testing delays, and construction delays brought on by bad weather. Moreover, in the utility industry, delays in the budgeting and approval of capital expenditures add to the inherent uncertainty in long-term construction schedules. The existing, flexible policy accommodates these realities without subjecting slow growth licensees to the harsh penalty of channel cancellation.

14. Under the proposed rule, slow growth licensees would still have to implement their systems in accordance

with their schedules, but now would be subject to Commission verification of compliance at anytime during the implementation period. Additionally, the Commission proposes to require a more comprehensive implementation schedule, asking the licensee to identify the channels to be constructed at each station at each of the indicated benchmarks. Given the threat of "random" compliance checks and the more rigorous schedule requirements, TU Electric requests that the Commission confirm that slow growth licensees will continue to be allowed to modify their schedules freely, as changing circumstances dictate. This will ultimately serve the Commission's interest in promoting spectrum efficiency, but at the same time allow slow growth licensees to avoid channel cancellation due to circumstances beyond their control.

WHEREFORE, THE PREMISES CONSIDERED, Texas Utilities Electric Company respectfully requests that the Commission make the above clarifications to its proposals.

Respectfully submitted,

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